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JUL 28 1992

Before the
Federal Communications Commission
Washington, DC

Federal Communications Commission
Office of the Secretary

In re Application of

KR PARTNERS

File No. BPH-911001MB

For a Construction Permit for a
New FM Broadcast Station on
Channel 256C, Waimea, Hawaii

To: Chief, Mass Media Bureau

OPPOSITION TO PETITION FOR LEAVE TO AMEND

Lori Lynne Forbes, by its attorney, hereby submits her opposition to the "Petition for Leave to Amend" filed by KR Partners ("KR") with respect to its pending application for Channel 256C, Waimea, Hawaii.^{1/} With respect thereto the following is stated:

1. KR filed its application on October 1, 1991, under the name of Julie K. O'Connor ("O'Connor"). In that application, O'Connor stated that her proposed operating budget was \$388,300. She certified that she was financially qualified based upon assurances of financing allegedly provided to her by "George Handgis" of Irvine, California, in the amount of \$400,000. See Attachment 1. The application was accepted for tender on January 30, 1992 (Report No. 15183), and on February 28, 1992, prior to the deadline date for filing amendments as a matter of right, she amended her application to specify KR Partners as the revised applicant of her application, and submitted an integration and diversification statement. See Attachment 2. There was no

change made with regard to the application's financial certification. Now, over three months after the deadline date for filing amendments as of right under Section 73.3622(a)(6) of the Commission's Rules has passed, KR has submitted a financial amendment to its application, seeking to change the source of financing relied upon for her proposal to "BDC Services, Inc.," and seeking to reduce the estimate of the anticipated costs to construct and initially operate the proposed facility from \$388,300 to "\$203,000." See Attachment 3. KR alleges that it lost its initial financing source on April 28, 1992, and that its amendment is being filed with "due diligence." No documentation establishing the existence of its original financial source, its new financial source, or an itemization of its original or present budget is included in the amendment. Rather, KR admits that even prior to April 28, 1992, "Ms. O'Connor had had discussions with Mr. Handgis [her originally-named financial source] concerning doubts about his continued support."

amendments to FM applications. These rules provide that amendments which address the acceptability or grantability of an application may be filed only as a matter of right prior to the expiration of the 30 day period triggered by the release of the Public notice announcing that the application has been accepted for tender. 50 Fed. Reg. at 19,941. See also 47 C.F.R. § 73.3522(a)(6). A party may not, however, perfect its application by correcting an acceptability or grantability defect after the time for filing amendments as of right has passed. Accordingly [an] amendment, as it relates to an applicant's financial status, will be returned as untimely and an appropriate financial issue will be specified

5 FCC Rcd at 3064-65. Amendments involving an applicant's financial qualifications pertain to the "grantability" of an applicant's application. Gloria Bell Boyd, 5 FCC Rcd 3500 ¶ 9 (MMB 1990). After the close of the amendment as a matter of right period, an applicant cannot amend its application by filing an amendment to address a matter which involves the "grantability" of its application. As the Commission has stated:

To accept amendments after the close of the amendment as a matter of right period would be unfair to other applicant in the proceeding, who fully complied with our acceptability requirements as of the amendment as a matter of right date.

Plenn H. Phelps, 6 FCC Rcd 579, 580 ¶ 3 (MMB 1991). See also, Gerald Penovich, 5 FCC Rcd 7395 ¶ 3 (MMB 1990); MBC Limited Partnership, 5 FCC Rcd 5250 (MMB 1990). In Shelton, an applicant also sought to have a late-filed amendment accepted pursuant to Section 73.3566(a)(2) of the Commission's Rules pertaining to post-acceptance-for-tender/pre-designation amendments. In rejecting the amendment, the Commission stated:

it is incumbent upon applicants seeking to amend their applications pursuant to this rule to plead with specificity Examples of information [an

applicant] could provide . . . include copies of correspondence and names of individuals . . . from whom correspondence has been received. Absent this degree of specificity, we are left with only [the applicant's] unsubstantiated statement that her original proposal is unacceptable Accordingly, since [[the applicant] has failed to demonstrate good cause for acceptance of her . . . amendment, it will be returned as unacceptable for filing.

5 FCC Rcd at 4875 ¶ 3. There, too, an appropriate issue was specified. With regard to financial amendments, in particular, an applicant seeking to amend its application beyond the relevant cut-off date is required to make a "full financial showing" demonstrating its financial qualifications. Radio Representatives, Inc., 6 FCC Rcd 6995 (1991) ("an applicant may not avoid a financial issue merely by recertifying without submitting supporting documentation"). An applicant that certified initially to its financial qualifications will not be permitted to amend without first establishing that it was financially qualified at the time of the original certification. Albert E. Gary, 5 FCC Rcd 6235, 6236 ¶ 10 (Rev. Bd. 1990); Pepper Shultz, 5 FCC Rcd 3273 ¶ 2 (1990). An applicant must establish its initial financial qualifications as an essential ingredient to a "good cause" showing for a later financial amendment. Marlin Broadcasting of Central Florida, 5 FCC Rcd 5751 (1990). In order for an amendment to be accepted, an applicant must demonstrate that its initial certification was valid. Mabelton Broadcasting Co., 5 FCC Rcd 6314, 6326 n.36 (Rev. Bd. 1990). In the event an applicant was not initially financially qualified, it cannot rely on a later-obtained letter in support of its

financial qualifications. Marc A. Albert, 6 FCC Rcd 6235 (Rev. Bd. 1991); Texas Communications Limited Partnership, 7 FCC Rcd 3186, 3187 (1992).

3. Applying these principles to this case, there are two components to KR's amendment -- it seeks to amend its financial source, and it seeks to amend its construction/operation budget. KR's amendment as it relates to either of these two aspects of its application may not be accepted.

4. With respect to the amendment of the source of financing, the amendment has not been timely filed, and in any event, insufficient information that has been provided to warrant the formal acceptance of the amendment. First of all, since the amendment was submitted after the last day for submitting amendments as of right, it is not acceptable at all under the reasoning of Radio Representatives, 5 FCC Rcd 3064-65, Plenn H. Phelps, and Gerald Penovich, since it pertains to the "grantability" of KR's application and it was not timely filed. In this regard, the case is analogous to Evans Broadcasting, 5 FCC Rcd 1675 (MMB 1990), where, as here, an applicant that initially was financially qualified lost its financing and sought to amend its application to reflect that it again was financially qualified. Id. at 1676-77. The Commission rejected the amendment, finding that an amendment filed after the period for filing amendments as of right, even if it purported to reestablish an applicant's financial "grantability" qualifications, is not acceptable. Id. at ¶ 10. Thus here, to

the extent KR needed to possibly amend its financial source, such an amendment had to be filed prior to the deadline for amendments as a matter of right in order for it to be freely acceptable. At the present time, it is not acceptable.

5. Moreover, in any event, "good cause" for acceptance of the amendment has not been established. As noted above, at all times from the initial filing of the application, the applicant purportedly "relied" upon Mr. Handgis in support of the applicant's financial qualifications. KR reports that on "April 28, 1992 George Handgis wrote to Ms. O'Connor withdrawing his financial support. Ms. O'Connor received this letter on May 5, 1992" and claims that it has now received "reasonable availability of financing from BDC Services, Inc." Attachment 3. However, no documentation has been provided evidencing (1) the adequacy of Mr. Handgis' initial financial assurances to KR; (2) the "withdrawal" of Mr. Handgis' alleged assurances to KR; or (3) the existence of assurances from "BDC Services, Inc." Lacking evidence establishing the sufficiency of KR's initial financial qualifications makes it impossible for the Commission to establish that KR initially was financially qualified which, under Albert Gary and Pepper Shultz, prevents accepts of its instant amendment.^{2/} Similarly, lacking evidence concerning the

^{2/} Where, as here, a lender is a person, the applicant must show that the person proposing to lend the funds has the necessary financial resources at that time. A balance sheet or other documentary evidence such as a financial statement would be sufficient to show that at the time of certification that person had sufficient net assets to meet his financial commitment to the applicant. Northampton Media Associates, 4 FCC Rcd 5517, 5519 (1989).

"withdrawal" of Mr. Handgis leaves the Commission with only KR's "unsubstantiated statement" concerning whether there is "good cause" for allowing the amendment which, as established in Shelton, is inadequate support for acceptance of an amendment at this juncture. Finally, without providing evidence of the alleged assurances provided by BDC, KR has failed to make the requisite full financial showing which, under Radio Representatives, is required in order to permit favorable consideration of KR's request for the acceptance of its late-filed amendment. For all of these reasons, that aspect of the amendment seeking to change at this late date the basis for KR's financial certification must be rejected and returned.

6. Moreover, the amendment apparently was not diligently filed. Although the amendment was filed within thirty days of Ms. O'Connor receiving a "letter" from Mr. Handgis in which he withdrew his support, as Ms. O'Connor candidly admits:

Prior to receiving this letter, Ms. O'Connor had had discussion with Mr. Handgis concerning doubts about his continued support

Attachment 3 at 2. Commission precedent is clear: in order to be financially qualified, an applicant must have a "present firm intention to make [the] loan . . . future conditions permitting" from a financial source that will provide funds. Merrimack Valley Broadcasters, 82 F.C.C.2d 166, 167 (1980). It appears from KR's own concession that KR's prospects for obtaining a loan from Mr. Handgis constituted substantially less than a "firm" intention for a loan for quite some time, and that KR

nevertheless failed to amend its application earlier to reflect its true status. Cf. Texas Communications Limited Partnership, 7 FCC 3186, 3187 ¶ 8 (1992) (applicant required to timely report withdrawal of financial support). In light of KR's failure to keep the Commission timely and properly advised concerning the status of its financial proposal, its amendment cannot be accepted for this reason, as well.

7. Additionally, that aspect of KR's amendment which seeks to reduce its budget estimates also cannot be accepted. KR has presented absolutely no facts or basis supporting acceptance of its revised estimates. As noted above, the Commission does not allow an applicant to freely amend its application. As the Review Board recently stated in Albert E. Gary, 5 FCC Rcd 6235 (Rev. Bd. 1990):

From the 1960s until the adoption of the (now-abandoned) financial certification requirements, Revision of From 301, 50 RR 2d 381 (1981), the Commission followed a liberal "policy of permitting an applicant to remove a disqualifying defect through amendment through hearing. See Fisher Broadcasting Co., 30 FCC 177 (1961), and Beacon Broadcasting Systems, Inc., FCC 60-118, 19 RR 927 (1960)." Azalea Corp., 31 FCC 2d 561, 563 (1971). Applicants were permitted to amend in response to petitions to add financial issues; William R. Gaston, 35 FCC 2d 615, 619 (Rev. Bd. 1972); many months after designation of an financial issue for hearing, Click Broadcasting Co., 25 FCC 2d 511, 513 (Rev. Bd. 1972); on the eve of the hearing, Bison City TV 49 L.P., 91 FCC 2d 26, 28-29 (Rev. Bd. 1982), and even after the hearing record was closed. Gilbert Broadcasting Group, 68 FCC 2d 186, 207-08 n.54 (Rev. Bd. 1978). This practice changed with the adoption of certification.

Id. at 6236 ¶ 9 (emphasis added).

8. Under Commission policy, each applicant is obliged to formulate a proposal for construction and initial operation of its proposed station prior to filing its application, depending on how it intends to operate its station. Gilbert Broadcasting Corp., 43 R.R.2d 51, 75 (Rev. Bd. 1978) (each applicant required to include within its application estimates reflecting costs of implementing its particular proposal; each applicant must be evaluated on the basis of the costs of operation it has proposed and not the costs proposed by other applicants). Prior to certification, it must have engaged in a "serious and reasonable efforts to ascertain predictable construction and operation costs." Northampton Media Associates, 4 FCC Rcd 5517, 5519 (1989).

9. Based upon the representations provided to the Commission, KR predecessor, Julie O'Connor, evidently concluded that it will take \$388,300 to construct and operate the proposal the applicant had in place as of September 16, 1991, the date KR's original application was executed. No amendment to that cost estimate was filed at any time during the amendment as of right period. Now, seven months later, KR has revised the cost estimates downward by nearly half, to \$203,450. From the magnitude and timing of that amendment, it is clear that KR is not merely amending its budget simply in accordance with Section 1.65 of the Commission's Rules to maintain the "accuracy" of the information being provided with respect to its proposal, but is

affirmatively changing its proposal, long after the last date for applicants for this allotment to make changes to their applications freely, to reflect a much less costly proposal for building and/or operating its proposed station. Absolutely no explanation, much less "good cause" for the wholesale modification of this aspect of KR's application, has been presented, nor does one apparently exist.^{3/} Therefore, this aspect of the amendment, as well, must be rejected.

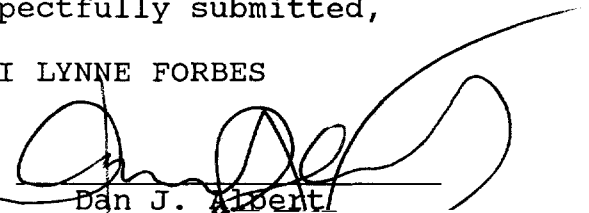
10. In short, KR's amendment represents an attempt to change and bolster its basic qualifications in a deficient, untimely manner. It has failed to establish good cause for the amendment, and has failed to provide information necessary to evaluate the adequacy of the amendment. For all of these reasons, the Petition for Leave to Amend filed by KR Partners must be denied, and the amendment it has submitted must be returned.

WHEREFORE, it is respectfully requested that the Petition for Leave to Amend filed by KR Partners be denied.

Respectfully submitted,

LORI LYNNE FORBES

By:


Dan J. Albert

ATTACHMENT 1

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

ATTACHMENT 2

DUPLICATE

920228MD

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KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

THE MCPHERSON BUILDING
901 FIFTEENTH STREET, N.W., SUITE 1100
WASHINGTON, D.C. 20005

(202) 682-3500

TELECOPY NUMBER
(202) 682-3580

425 PARK AVENUE
NEW YORK, N.Y. 10022
212 836-8000

999 AVENUE OF THE STARS
SUITE 1600
LOS ANGELES, CA 90067
213 738-1000

WRITERS DIRECT DIAL NUMBER

Federal Communications Commission
Office of the Secretary

ADM. BLDG. CENTRE
TOWER 1, 32ND FLOOR
18 HARCOURT ROAD
HONG KONG
(852) 865-7676

SQUARE DE MEEUS 30
1040 BRUSSELS, BELGIUM
(322) 514 4300

(202) 682-3538

February 28, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commissions
1919 M Street, N.W.
Washington, D.C. 20554

Re: Julie K. O'Connor, Kamuela, HI
File No.: 911001MB

Dear Ms. Searcy:

On behalf of Julie K. O'Connor, applicant for a new FM broadcast station to operate on the frequency 99.1 MHz at Kamuela, Hawaii, there is transmitted herewith, in triplicate, an amendment to that application filed in response to the Commission's January 31, 1992 Public Notice (Report No. 15183) that accepted Ms. O'Connor's application for tender.

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

Ms. Donna R. Searcy

- 2 -

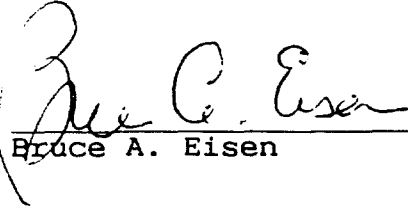
February 28, 1992

Should any questions arise with regard to this matter,
kindly communicate directly with this office.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS
& HANDLER

By:


Bruce A. Eisen

Enclosures

BAE:lw

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FEB 28 1992

Federal Communications Commission
Office of the Secretary

AMENDMENT

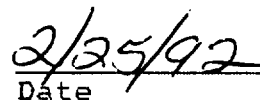
The application of Julie K. O'Connor for a new FM broadcast station at Waimea, Hawaii is amended to propose a general partnership. All answers to FCC form 301 remain the same except for those pages attached to this amendment.

Furthermore, the partnership proposes to install auxillary power generators at the transmitter and studio sites in the event of a power emergency.

Respectfully submitted,

KR Partners

By: 
Julie K. O'Connor General Partner


Date

FCC 301

Approved by OMB
3060-0027

Expires 2/28/92

See Page 25 for information
regarding public burden estimate

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only

FEE NO:

FEE TYPE

FEE AMT:

ID SEQ:

For APPLICANT Fee Use Only

Is a fee submitted with this
application?

☐ Yes ☐ No

If fee exempt (see 47 C.F.R. Section 1.1112),
indicate reason therefor (check one box):

- ☐ Noncommercial educational licensee
☐ Governmental entity

FOR COMMISSION USE ONLY

FILE NO.

Section I - GENERAL INFORMATION

1. Name of Applicant

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Send notices and communications to the following
person at the address below:

Section II - LEGAL QUALIFICATIONS

Name of Applicant

K R Partners

1. Applicant is (check one box below)

☐ Individual

☒ General partnership

☐ For-profit corporation

☐ Other

☐ Limited partnership

☐ Not-for-profit corporation

2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership, or corporation, describe in an Exhibit the nature of the application.

Exhibit No.
DNA



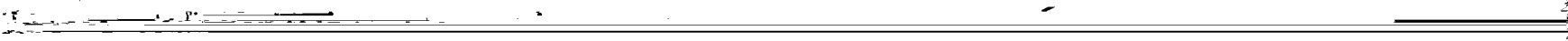



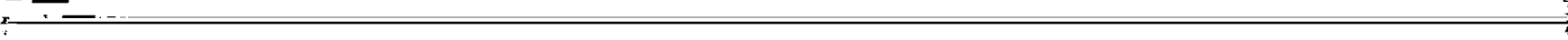
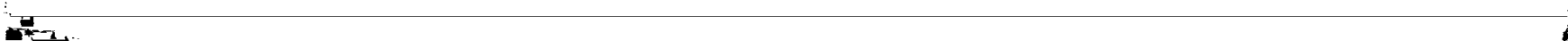






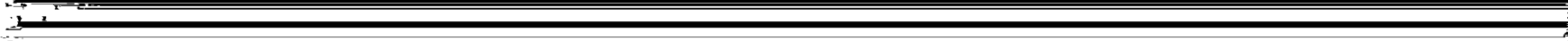




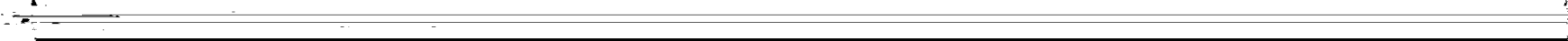
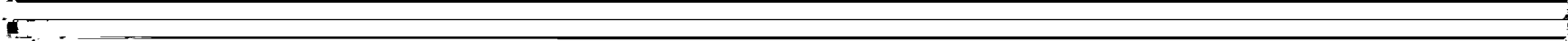

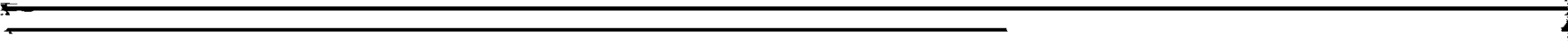


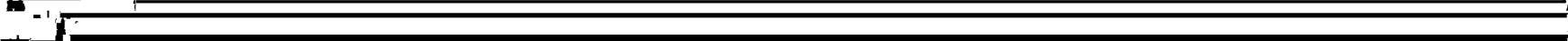







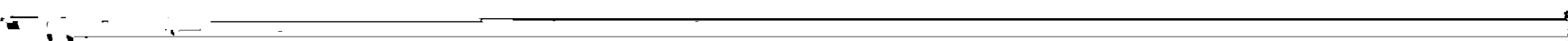
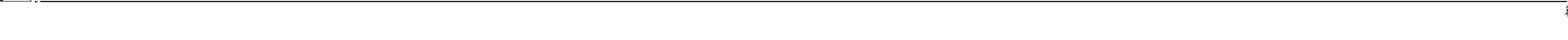
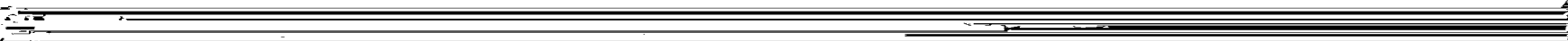

NOTE: The terms "applicant," "parties to this application," and "non-party equity owners in the applicant" are defined in the instructions for Section II of this form. Complete information as to

Section II - LEGAL QUALIFICATIONS (Page 2)

List the applicant parties to the application and non-party equity owners in the applicant. Use one column for each

INTEGRATION STATEMENT

Julie K. O'Connor will operate full-time (at least 40 hours per week) as General Manager of her proposed FM Broadcast Station. She will perform the customary and usual duties of the General Manager and will have responsibility for determining and



on behalf of selected clients. His duties will include the recruitment and hiring of the sales staff in consultation with the General Manager; retention of the national or regional sales representatives; the development of the sales program, in consultation with the General Manager; the execution of sales and advertising policies adopted in coordination with the General Manager; and the review and coordination of sales efforts made by the sales staff of the station.

Nelson Ray Parker will claim qualitative credit for his past local residence from 1987 to the present, as well as for civic/charitable affiliations within the service area. He will further claim qualitative enhancement for his status as an Asian-American, and for his broadcast experience which includes the following:

1983-1987 -- Station KKBG(FM), Hilo, Hawaii
(announcer)

1987 -- Station KWXX(FM), Hilo, Hawaii
(announcer)

1990-present -- Station KLVA(FM), Kailua-Kona, Hawaii (account executive, announcer)

Both Ms. O'Connor and Mr. Parker will resign their positions in the event that the application is granted. Neither partner has had any cognizable interest in the media of mass communications.

ATTACHMENT 3

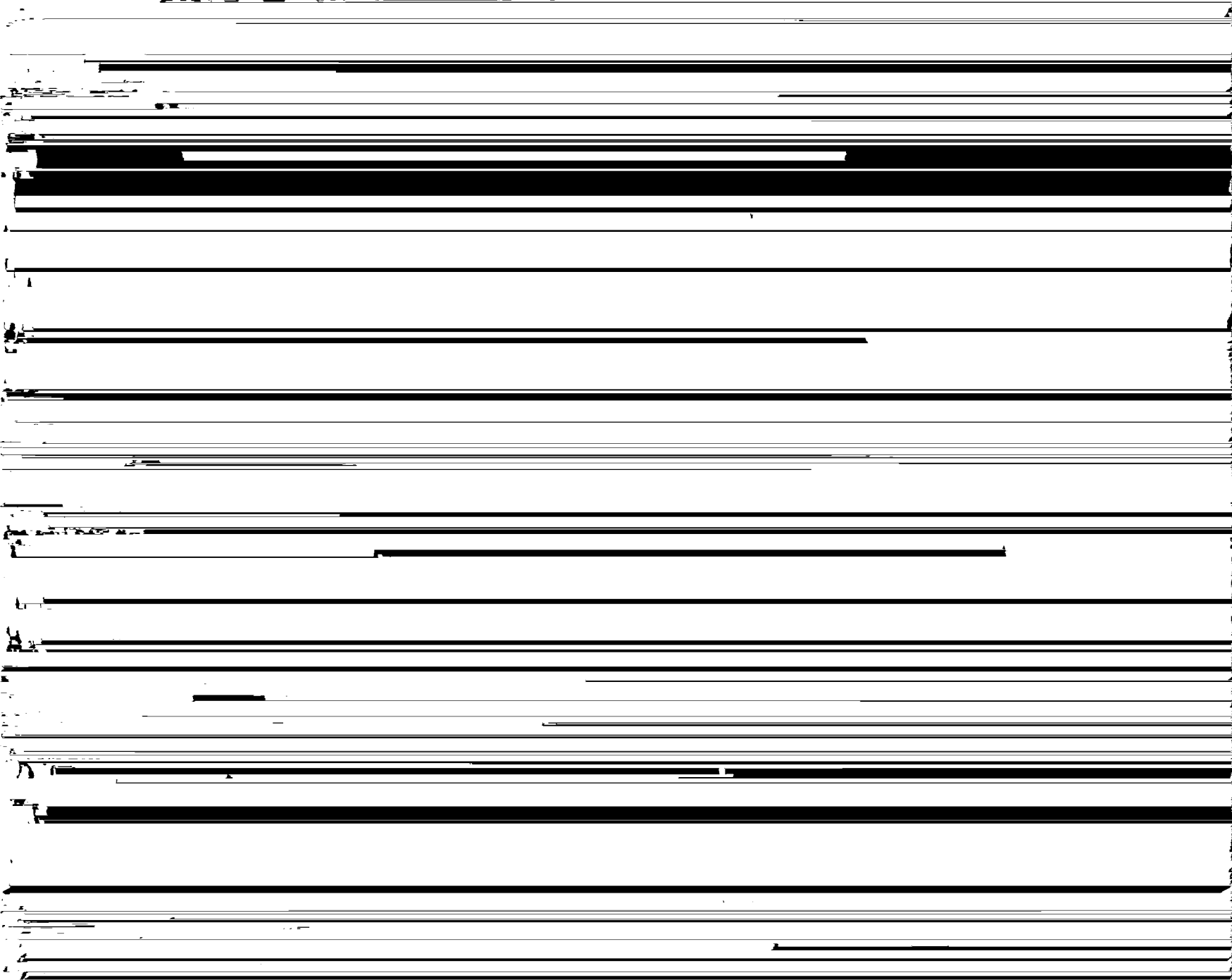
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JUL 28 1992

Federal Communications Commission
Office of the Secretary

AMENDMENT

The application of KR Partners for a new FM broadcast
station at Waimea, Hawaii, is hereby amended with the attached



JUL 28 1992

Federal Communications Commission
Office of the Secretary

On April 28, 1992 George Handgis wrote to Ms. O'Connor withdrawing his proposed financial support. Ms. O'Connor received this letter on May 5, 1992. Prior to this letter

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 203,450

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
BDC Services, Inc. 766 S. Ayon Nazusa, California 91702 Michael Marikian	(818) 792-6747	Lender	\$250,000